

Montana Water Court  
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**FILED**  
03/31/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41U-0072-R-2023  
Stern, Anika  
4.00

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
DEARBORN RIVER BASIN (41U)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Mosher Family Limited Partnership

NOTICE OF INTENT TO APPEAR: Dearborn Ranch LLC

**CASE 41U-0072-R-2023**  
**41U 96987-00**

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

**FINDINGS OF FACT**

1. Mosher Family Limited Partnership irrigation claim 41U 96987-00 was decreed with the following issue remark:

2. No objections were filed to claim 41U 96987-00.
3. Dearborn Ranch, LLC filed a Notice of Intent to Appear for claim 41U 96987-00.
4. A deadline was set for Dearborn Ranch, LLC to explain how it intends to prosecute the Notice of Intent to Appear.
5. On March 9, 2023, Dearborn Ranch, LLC filed a Statement of Position in Response to Water Court Order. (Doc. 3.00)<sup>1</sup> The March 9, 2023 filing stated, in part:  
Accordingly, based on prior proceedings at the Temporary Preliminary Decree stage participated in by its predecessor-in-interest Curran, it is Dearborn Ranch's position that water right claim 41U 96987-00 should remain decreed as it currently appears in the Preliminary Decree for Basin 41U.

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.
2. The DNRC issue remark is not supported by evidence sufficient to overcome the prima facie status afforded the point of diversion of the claim.

#### RECOMMENDATIONS

1. The issue remark should be removed from claim 41U 96987-00.
2. No changes should be made to the elements of claim 41U 96987-00.
3. The Dearborn Ranch, LLC Notice of Intent to Appear should be dismissed, consistent with the March 9, 2023 filing.

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<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Michael JL Cusick  
Cusick, Farve, Mattick & Refling, P.C.  
PO Box 1288  
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**Helena, MT 59602**  
**(406) 502-1244**  
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**Service via USPS Mail:**

Mosher Family Limited Partnership  
PO Box 283  
Augusta, MT 59410-0283  
**(Last Order)**

**Service List Updated: 3/13/2023**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 96987-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MOSHER FAMILY LIMITED PARTNERSHIP  
PO BOX 283  
AUGUSTA, MT 59410 0283

**Priority Date:** SEPTEMBER 25, 1888

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 341.09 GPM

**Volume:** 54.80 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 20.00

**Source Name:** FLAT CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENE	18	18N	6W	LEWIS AND CLARK

**Period of Diversion:** MARCH 1 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** MARCH 1 TO NOVEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		NW	17	18N	6W	LEWIS AND CLARK

**Total:** 20.00